

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Michael T. Mays, #29239-048,)	
)	C/A No.: 8:05-2218-MBS
Petitioner,)	
)	
vs.)	
)	
Mathew Hamidullah, Warden, F.C.I.)	OPINION AND ORDER
Estill,)	
)	
Respondent.)	
)	

Petitioner Michael T. Mays is an inmate in custody of the Bureau of Prisons who currently is housed at the Federal Correctional Institution in Estill, South Carolina. Petitioner was sentenced on March 13, 1999 in the Central District of California after a plea of guilty to drug charges.

On August 22, 2005, Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, asserting that the career offender enhancement he received at sentencing violated his rights under Apprendi v. New Jersey, 530 U.S. 466 (2000), Blakely v. Washington, 542 U.S. 296 (2004), United States v. Booker, 125 S. Ct. 738 (2005), and Shepard v. United States, 125 S. Ct. 1254 (2005).

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bruce H. Hendricks for pretrial handling. The Magistrate Judge reviewed the petition pursuant to the provisions of 28 U.S.C. §§ 1915 and 1915A, the Anti-Terrorism and Effective Death Penalty Act of 1996, and other habeas corpus statutes. On August 22, 2005, the Magistrate Judge filed a Report and Recommendation. The Magistrate Judge recommended that the case be dismissed without prejudice because a prisoner who challenges his

federal conviction or sentence must proceed under 28 U.S.C. § 2255.¹ Petitioner filed no response to the Report.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of objections to the Report, this court is not required to give any explanation for adopting the recommendation. Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

The court has thoroughly reviewed the record. The court concurs in the Report and Recommendation of the Magistrate Judge and incorporates it herein by reference. For the reasons stated, the case is dismissed *without prejudice* and without requiring Respondent to file a return.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

September 14, 2005

Columbia, South Carolina

¹ The Magistrate Judge further noted that Apprendi, Blakely, and Booker, have not been made retroactive on collateral review, so that a § 2255 motion would be of no avail. To the extent Petitioner challenges his sentence under Shepard v. United States, 125 S. Ct. 1254 (2005), or under any other authority, he must do so under § 2255, and he must file his motion before the court that imposed the sentence. See 28 U.S.C. § 2255.

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.